

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: June 10, 2013

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: Process for and Use of Proceeds from the Sale of Easements Over Centrum Park

INTRODUCTION

On April 30, 2013, the San Diego City Council waived Council Policy 700-06 and authorized the conveyance of two building restricted easements to Sunroad Centrum Partners, the developers of Centrum Park. That Council action did not address compensation for the easement. On May 16, 2013, the Mayor vetoed the Council's action on the basis that the administrative staff had not been involved. Pursuant to San Diego Charter section 285, the matter is before the Council to consider whether to override the Mayor's veto. Charter section 285 requires a vote of two-thirds of the Council to override a Mayoral veto. If the item does not receive sufficient votes within thirty calendar days of the veto, the item is disapproved.

It recently came to this Office's attention that Sunroad submitted to the Mayor's Office two checks totaling \$100,000. The following advice regarding the use of the funds is based on the limited facts available to this Office. If the \$100,000 was consideration for the interests in real property—the easements, both the San Diego Charter and the San Diego Municipal Code set forth various requirements regarding the sale of City property, which have not been met at this point. If the \$100,000 was a donation, the funds may be deposited into the General Fund.

ANALYSIS

The process for the sale of real property and the use of the funds generated from the sale are governed by the San Diego Municipal Code and the San Diego Charter.

I. COMPLIANCE WITH SAN DIEGO MUNICIPAL CODE SECTION 22.0902, SALES OF REAL PROPERTY

San Diego Municipal Code section 22.0902 sets forth certain criteria for the sale of real property. Whether the City's transfer of an easement for value is a sale of City-owned property is determined by ordinary construction of the language. Black's Law Dictionary 1454 (9th ed. 2009) defines "sale" as the "transfer of property or title for a price." In turn, in its ordinary sense, "title" represents the "union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property" *Id.* at 1622. An "easement" is defined as "[a]n interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road)." *Id.* at 585-86.

Interpretation of the language in its ordinary sense dictates that the transfer of ownership rights in an easement over City-owned land for consideration is a sale of real property. San Diego Municipal Code section 22.0902 requires that the City Council approve the sale of real property with the following information provided: (a) the reason for the sale; (b) a description of the property; (c) a statement of value of the property, as disclosed in an appraisal made by a qualified real estate appraiser; (d) a statement that the City may pay a real estate broker's commission; and (e) a statement that the property may be sold by negotiation, public auction, or by sealed bids. If sold by negotiation, the reasons shall be set forth. *Id.* The information before the Council for transfer of the building restricted easements over Centrum Park contains the information in criteria (a) and (b); however, if the transfer of the easements is a sale, the criteria (c) through (e) must also be presented to the Council prior to the approval of a sale.

II. SAN DIEGO CHARTER SECTION 77 REQUIREMENTS FOR USE OF THE PROCEEDS FROM THE SALE OF REAL PROPERTY

In addition to the process requirements set forth in San Diego Municipal Code section 22.0902, the San Diego Charter requires that the funds from the proceeds of the sale of real property be deposited in the Capital Outlay Fund and used exclusively for the purposes of the "acquisition, construction and completion of permanent capital improvements," absent a vote of two-thirds of the electorate. City Att'y MS 2010-1 (Apr. 1, 2010); 1987 City Att'y MOL 139 (87-11; Feb. 10, 1987). City staffs' practice has been to deposit funds received from the transfer of ownership rights in an easement over City-owned land to the Capital Outlay Fund. If funds were received for the transfer of building restricted easements over Centrum Park, those funds must be deposited and spent in accordance with San Diego Charter section 77.

CONCLUSION

If the \$100,000 or any portion is in exchange for the easements, the current action before the Council does not contain the criteria in San Diego Municipal Code section 22.0902, and does not direct the deposit of the funds into the Capital Outlay Fund in accordance with San Diego Charter section 77. Therefore, if the Council desires to approve the sale of the easements, that approval may be docketed for future Council consideration, which would allow for the inclusion of all relevant information in the back-up materials, noticing under the Ralph M. Brown Act, and the preparation of the appropriate resolutions. If the \$100,000 was a donation, and no portion was in exchange for the easements, no San Diego Municipal Code or San Diego Charter section precludes depositing the funds into the General Fund, and no further Council action would be necessary to grant the easements.

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